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KESTROS CAPITAL MANAGEMENT, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**KESTROS CAPITAL MANAGEMENT,
LLC.**

Case No.:

Plaintiff.

V.

COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND FALSE DESIGNATION OF ORIGIN

**KESTRA INVESTMENT SERVICES, LLC
and KESTRA FINANCIAL, INC..**

TRIAL BY JURY DEMANDED

Defendants.

1 Plaintiff Kestros Capital Management, LLC (“Kestros”) for its Complaint against
 2 Defendants Kestra Investment Services, LLC and Kestra Financial, Inc. (collectively,
 3 “Defendants”) alleges as follows:

4 **PARTIES**

5 1. Plaintiff Kestros is a limited liability company organized and existing under the
 6 laws of the State of Delaware, having its principal place of business at 2666 E. Bayshore Road,
 7 Suite C, Palo Alto, California 94303.

8 2. Defendant Kestra Investment Services, LLC (“Kestra Investment Services”) is a
 9 limited liability company organized and existing under the laws of the State of Texas, having its
 10 principal place of business at 1250 Capital of Texas Highway, Suite 125, Austin, Texas 78746.

11 3. Defendant Kestra Financial, Inc. is a corporation organized and existing under the
 12 laws of the State of Delaware, having its principal place of business at 1250 Capital of Texas
 13 Highway, Suite 125, Austin, Texas 78746.

14 **JURISDICTION AND VENUE**

15 4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C.
 16 § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question jurisdiction);
 17 28 U.S.C. § 1338(a) (any Act of Congress relating to trademarks); and 28 U.S.C. § 1367
 18 (supplemental jurisdiction).

19 5. This Court has personal jurisdiction over Defendants as, upon information and
 20 belief, Defendants conduct business in this judicial district, Defendants’ infringing services
 21 complained of herein are offered within this judicial district. Defendants have an office within
 22 this judicial district from which they offer the infringing services complained of herein, and
 23 Defendants have caused injury to Kestros within this judicial district.

24 6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(b)(2) because,
 25 on information and belief, Defendants regularly transact business within this judicial district and
 26 have an office within this judicial district, and Defendants’ activities cause harm to Kestros in this
 27 district. The Lanham Act provides that venue lies in the place of harm to the plaintiff.

GENERAL ALLEGATIONS

A. About Kestros' Business

7. Kestros is a capital management company that offers independent and objective financial advice. Its recommendations are not affected by any outside business relationships or incentives. Kestros prides itself on helping individuals and organizations make sound financial decisions based on their risk tolerance.

8. Kestros also provides personalized confidential financial planning and consulting services and manages investment portfolios for individuals, pension and profit sharing plans, trusts, estates, charitable organizations, and businesses.

9. Since at least as early as March 20, 2014, Kestros has continuously offered and provided financial and investment advice and services under the KESTROS® trademark.

10. Kestros promotes its financial and investment advice and services under the KESTROS® mark on its website at www.kestros.com.

B. Kestros' Trademark Rights

11. Kestros has taken all appropriate measures to protect its rights in the KESTROS® trademark.

12. Kestros owns U.S. Trademark Registration No. 4,622,037 for the mark KESTROS® for use in connection with “Financial advisory and consultancy services; Financial analysis and consultation; Financial and investment services, namely, consultation, advisory and development; Financial research; Financial risk management; Investment advice” in International Class 36, which issued on October 14, 2014. Kestros filed the application that resulted in U.S. Trademark Registration No. 4,622,037 on June 12, 2013, and subsequently submitted a statement of use alleging use in commerce at least as early as March 20, 2014 and use in interstate commerce at least as early as July 2, 2014. U.S. Trademark Registration No. 4,622,037 is prima facie evidence of the validity of the KESTROS® mark, of the registration of the KESTROS® mark, of Kestros’ ownership of the KESTROS® mark, and of Kestros’ exclusive right to use the KESTROS® mark in commerce on or in connection with the services specified in the

1 registration. Attached hereto as Exhibit A is a true and correct copy of the registration certificate
2 for Registration No. 4,622,037.

3 13. The KESTROS® mark is used in connection with Kestros' financial, investment,
4 and consulting services in the United States. As such, Kestros also owns common law rights in
5 the KESTROS® mark for these services.

6 14. As a result of Kestros' expenditures and efforts, the KESTROS® mark has come
7 to signify the high quality of Kestros' services. The KESTROS® mark has incalculable
8 reputation and goodwill, belonging exclusively to Kestros.

9 **C. Defendants' Business and Wrongful Conduct**

10 15. Defendants also provide financial and investment advice and services.
11 Specifically, Defendants, without Kestros' authorization, recently began marketing and providing
12 financial and investment services that are competitive with Kestros' financial and investment
13 services under trademarks that are nearly identical to Kestros' KESTROS® mark. These
14 trademarks include the KESTRA and KESTRA FINANCIAL marks (collectively the "KESTRA
15 Infringing Marks").

16 16. Defendants' financial and investment services offered under the KESTRA
17 Infringing Marks are of the same nature as the financial and investment services Kestros offers
18 under the KESTROS® mark and compete directly with the financial and investment services
19 Kestros offers under the KESTROS® mark.

20 17. On information and belief, Defendants' financial and investment services offered
21 under the KESTRA Infringing Marks are being offered through channels of trade that overlap
22 with those where Kestros' financial and investment services are offered under the KESTROS®
23 mark and are offered to the same classes of consumers.

24 18. On information and belief, Defendants knew of Kestros' prior rights in the
25 KESTROS® mark when they chose to adopt the KESTRA Infringing Marks for use in
26 connection with financial and investment services and utterly disregarded those rights.

27 19. On information and belief, Defendants did not begin to use or promote the
28 KESTRA Infringing Marks in connection with financial and investment services until long after

1 Kestros first used, promoted, and registered its KESTROS® mark. Specifically, Defendants did
2 not begin offering financial and investment services under the infringing KESTRA trademark
3 until May 2016 and did not begin offering financial and investment services under the infringing
4 KESTRA FINANCIAL trademark until April 2016.

5 20. The KESTRA Infringing Marks are confusingly similar to the KESTROS® mark.
6 The first five letters of the KESTRA Infringing Marks are identical to the first five letters of
7 Kestros' KESTROS® mark—KESTR. The KESTR- element in both marks is followed by a
8 vowel; Kestros' mark then ends with the letter "S," which often symbolizes the plural form of a
9 word, rendering the marks close to visually identical. Aurally, the KESTROS® mark sounds like
10 the plural form of KESTRA, rendering the marks close to aurally identical. Finally, neither mark
11 has a commonly understood meaning, so the KESTROS® and KESTRA Infringing Marks are not
12 distinguishable in meaning. With respect to the KESTRA FINANCIAL mark, the addition of the
13 FINANCIAL element is not distinguishing because it is merely descriptive of the financial
14 services that Defendants provide and has been disclaimed in Defendants' two applications to
15 register the KESTRA FINANCIAL mark. By almost exactly copying the KESTROS® mark,
16 Defendants' KESTRA Infringing Marks are likely to cause consumers to believe that Defendants'
17 services are associated with Kestros' services.

18 21. Because Defendants' KESTRA Infringing Marks are nearly identical to Kestros'
19 KESTROS® mark, Kestros' and Defendants' marks are confusingly similar in appearance,
20 sound, meaning, connotation, and commercial impression.

21 22. On information and belief, Defendants' infringing acts are likely to cause
22 confusion or mistake or deception, now and in the future, as to the origin, source, and sponsorship
23 of Defendants' services.

24 23. Defendants' conduct is ongoing and will continue unless restrained by the Court.
25 Unless Defendants are enjoined from engaging in the wrongful conduct described above, Kestros
26 will suffer irreparable harm, including through loss of goodwill, reputation, market share, and
27 revenue.

1 24. Moreover, the affiliation between Defendants' and Kestros' services will cause
2 incalculable harm to Kestros because, on information and belief, Defendant Kestra Investment
3 Services has been fined and sanctioned a number of times, including by the Commonwealth of
4 Massachusetts.

5 25. In fact, there is even a website hosted by Sonn Law Group soliciting business for
6 persons harmed by Kestra Investment Services ([https://www.sonnlaw.com/investigations/kestra-](https://www.sonnlaw.com/investigations/kestra-investment-history-regulatory-sanctions/)
7 [investment-history-regulatory-sanctions/](https://www.sonnlaw.com/investigations/kestra-investment-history-regulatory-sanctions/)) listing "breach of fiduciary duty, negligence, and
8 excessive markups." On information and belief, some of these sanctions were for an alleged
9 failure to adequately supervise its registered representatives. Further, a Google search for "Kestra
10 financial sanctions" shows many such sites and returns website results with details for at least ten
11 sanctions.

12 26. Kestros has no adequate remedy at law for the irreparable harm that it is likely to
13 suffer from loss of control of its KESTROS® trademark and association with Defendants.

14 **D. Defendants' Federal Trademark Filings**

15 27. Defendant Kestra Financial, Inc. is the current owner of U.S. Application Serial
16 No. 86/983,057 for the KESTRA trademark filed on February 19, 2016 for "Financial consulting
17 and advisory services in the fields of wealth management, insurance brokerage, financial
18 investments, managed accounts, mutual funds, securities, annuities, hedge funds, options,
19 retirement plans, investment advice, and financial planning; financial retirement plan consulting
20 and administration services; providing a web site featuring financial and stock market research
21 information in order to assist financial professionals in the management of financial investments;
22 providing information and advice in the fields of finance, financial investments, financial
23 valuations, and the financial aspects of retirement; providing a resource website featuring
24 information in the fields of wealth management, insurance brokerage, financial investments,
25 managed accounts, mutual funds, securities, annuities, hedge funds, options, retirement plans,
26 investment advice, and financial planning; providing information and analysis in the fields of
27 wealth management, insurance brokerage, financial investments, managed accounts, mutual
28 funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and

1 financial planning; financial planning; financial planning and investment advisory services;
2 financial advisory and consultancy services; financial analysis and research services” in
3 International Class 36.

4 28. Defendant Kestra Financial, Inc. is the current owner of U.S. Application Serial
5 No. 86/913,184 for the KESTRA trademark filed on February 19, 2016 for the goods “Business
6 marketing and consulting services in the fields of wealth management, insurance brokerage,
7 financial investments, managed accounts, mutual funds, securities, annuities, hedge funds,
8 options, retirement plans, investment advice, and financial planning; marketing advisory services
9 in the fields of wealth management, insurance brokerage, financial investments, managed
10 accounts, mutual funds, securities, annuities, hedge funds, options, retirement plans, investment
11 advice, and financial planning; consulting services in the field of practice management for
12 financial advisors; providing business planning and marketing solutions for financial advisors” in
13 International Class 35, “Providing a resource website featuring marketing materials in the fields
14 of wealth management, insurance brokerage, financial investments, managed accounts, mutual
15 funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and
16 financial planning; financial due diligence services in the fields of wealth management, insurance
17 brokerage, financial investments, managed accounts, mutual funds, securities, annuities, hedge
18 funds, options, retirement plans, investment advice, and financial planning; stock brokerage
19 services; mutual fund brokerage; financial investment brokerage; estate planning; financial asset
20 management and allocation; hedge fund investment services; investment management” in
21 International Class 36, “Business education and training services, namely, providing conferences,
22 seminars, online interactive training sessions, non-downloadable webinars, and online non-
23 downloadable videos in the fields of wealth management, insurance brokerage, financial
24 investments, managed accounts, mutual funds, securities, annuities, hedge funds, options,
25 retirement plans, investment advice, and financial planning; interactive online training services in
26 the fields of wealth management, insurance brokerage, financial investments, managed accounts,
27 mutual funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and
28 financial planning; providing training for financial advisors in the fields of business management,

1 business operations, sales and marketing; providing online, non-downloadable videos featuring
2 educational and training content in the fields of wealth management, insurance brokerage,
3 financial investments, managed accounts, mutual funds, securities, annuities, hedge funds,
4 options, retirement plans, investment advice, and financial planning” in International Class 41,
5 and “Providing a website featuring technology which provides users with the ability to obtain
6 information and analysis by downloading customized reports regarding wealth management,
7 insurance brokerage, financial investments, managed accounts, mutual funds, securities,
8 annuities, hedge funds, options, retirement plans, investment advice, and financial planning;
9 providing an interactive website featuring technology that allows users to access and synthesize
10 information and generate reports for use in providing investment advice, financial advisory and
11 retirement planning services; providing technology consulting in the fields of wealth
12 management, insurance brokerage, financial investments, managed accounts, mutual funds,
13 securities, annuities, hedge funds, options, retirement plans, investment advice, and financial
14 planning” in International Class 42.

15 29. Defendant Kestra Financial, Inc. is the current owner of U.S. Application Serial
16 No. 86/913,195 for the KESTRA FINANCIAL trademark filed on February 19, 2016 for
17 “Financial consulting and advisory services in the fields of wealth management, insurance
18 brokerage, financial investments, managed accounts, mutual funds, securities, annuities, hedge
19 funds, options, retirement plans, investment advice, and financial planning; financial retirement
20 plan consulting and administration services; providing a web site featuring financial and stock
21 market research information in order to assist financial professionals in the management of
22 financial investments; providing information and advice in the fields of finance, financial
23 investments, financial valuations, and the financial aspects of retirement; providing a resource
24 website featuring information in the fields of wealth management, insurance brokerage, financial
25 investments, managed accounts, mutual funds, securities, annuities, hedge funds, options,
26 retirement plans, investment advice, and financial planning; providing information and analysis in
27 the fields of wealth management, insurance brokerage, financial investments, managed accounts,
28 mutual funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and

1 financial planning; financial planning; financial planning and investment advisory services;
2 financial advisory and consultancy services; financial analysis and research services” in
3 International Class 36.

4 30. Defendant Kestra Financial, Inc. is the current owner of U.S. Application Serial
5 No. 86/983,033 for the KESTRA FINANCIAL trademark filed on February 19, 2016 for
6 “Business marketing and consulting services in the fields of wealth management, insurance
7 brokerage, financial investments, managed accounts, mutual funds, securities, annuities, hedge
8 funds, options, retirement plans, investment advice, and financial planning; marketing advisory
9 services in the fields of wealth management, insurance brokerage, financial investments, managed
10 accounts, mutual funds, securities, annuities, hedge funds, options, retirement plans, investment
11 advice, and financial planning; consulting services in the field of practice management for
12 financial advisors; providing business planning and marketing solutions for financial advisors” in
13 International Class 35, “Providing a resource website featuring marketing materials in the fields
14 of wealth management, insurance brokerage, financial investments, managed accounts, mutual
15 funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and
16 financial planning; financial due diligence services in the fields of wealth management, insurance
17 brokerage, financial investments, managed accounts, mutual funds, securities, annuities, hedge
18 funds, options, retirement plans, investment advice, and financial planning; stock brokerage
19 services; mutual fund brokerage; financial investment brokerage; estate planning; financial asset
20 management and allocation; hedge fund investment services; investment management” in
21 International Class 36, “Business education and training services, namely, providing conferences,
22 seminars, online interactive training sessions, non-downloadable webinars, and online non-
23 downloadable videos in the fields of wealth management, insurance brokerage, financial
24 investments, managed accounts, mutual funds, securities, annuities, hedge funds, options,
25 retirement plans, investment advice, and financial planning; interactive online training services in
26 the fields of wealth management, insurance brokerage, financial investments, managed accounts,
27 mutual funds, securities, annuities, hedge funds, options, retirement plans, investment advice, and
28 financial planning; providing training for financial advisors in the fields of business management,

1 business operations, sales and marketing; providing online, non-downloadable videos featuring
2 educational and training content in the fields of wealth management, insurance brokerage,
3 financial investments, managed accounts, mutual funds, securities, annuities, hedge funds,
4 options, retirement plans, investment advice, and financial planning” in International Class 41,
5 and “Providing a website featuring technology which provides users with the ability to obtain
6 information and analysis by downloading customized reports regarding wealth management,
7 insurance brokerage, financial investments, managed accounts, mutual funds, securities,
8 annuities, hedge funds, options, retirement plans, investment advice, and financial planning;
9 providing an interactive website featuring technology that allows users to access and synthesize
10 information and generate reports for use in providing investment advice, financial advisory and
11 retirement planning services; providing technology consulting in the fields of wealth
12 management, insurance brokerage, financial investments, managed accounts, mutual funds,
13 securities, annuities, hedge funds, options, retirement plans, investment advice, and financial
14 planning” in International Class 42.

FIRST CLAIM FOR RELIEF

Trademark Infringement Under 15 U.S.C. § 1114

17 31. Kestros repeats and realleges each allegation set forth in paragraphs 1 through 30
18 above as if fully set forth herein.

19 32. The acts of Defendants described above constitute trademark infringement in
20 violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

21 33. Kestros has valid and protectable registered rights in the KESTROS® mark dating
22 from the June 12, 2013 filing date for its application to register the KESTROS® mark. It has
23 used the KESTROS® mark in commerce in the United States since at least as early as March 20,
24 2014. These rights predate Defendants' use of the KESTRA Infringing Marks in regard to
25 financial and investment services in the United States, which did not begin until April 2016.

26 34. On information and belief, Defendants had actual knowledge of Kestros'
27 ownership and use of the KESTROS® mark prior to their adoption of the KESTRA Infringing
28 Marks.

35. Defendants' unauthorized use of the KESTRA Infringing Marks as alleged above is likely to cause confusion, mistake, or deception on the part of consumers as to the source, nature, and quality of the services Defendants are offering under the KESTRA Infringing Marks, constituting trademark infringement in violation of 15 U.S.C. § 1114.

36. As a direct and proximate result of Defendants' wrongful conduct, Kestros has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts, and unless Defendants are enjoined by the Court, Kestros will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which Kestros has no adequate remedy at law.

37. On information and belief, Defendants have acted willfully to usurp Kestros' rights, and Defendants should be held liable to Kestros for treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a)(1)(A)

38. Kestros repeats and realleges each allegation set forth in paragraphs 1 through 37 above as if fully set forth herein.

39. The acts of Defendants as described above constitute unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. Kestros has valid and protectable registered rights in the KESTROS® mark dating from the June 12, 2013 filing date for its application to register the KESTROS® mark. It has used the KESTROS® mark in commerce in the United States since at least as early as March 20, 2014. These rights predate Defendants' use of the KESTRA Infringing Marks in regard to financial and investment services in the United States, which did not begin until April 2016.

41. On information and belief, Defendants had actual knowledge of Kestros' ownership and use of the KESTROS® mark prior to their adoption and use of the KESTRA Infringing Marks.

42. Defendants' unauthorized use of the KESTRA Infringing Marks as alleged above is likely to cause consumers to believe that there is a relationship between Defendants and

1 Kestros and/or that Defendants' services are associated with or come from Kestros and such
 2 association constitutes false designation of origin, in violation of 15 U.S.C. § 1125(a).

3 43. As a direct and proximate result of Defendants' wrongful conduct, Kestros has
 4 been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts,
 5 and unless Defendants are enjoined by the Court, Kestros will suffer further harm to its name,
 6 reputation, and goodwill. This harm constitutes an injury for which Kestros has no adequate
 7 remedy at law.

8 44. On information and belief, Defendants have acted willfully to usurp Kestros'
 9 rights, and Defendants should be held liable to Kestros for treble damages and attorneys' fees
 10 pursuant to 15 U.S.C. § 1117(a).

THIRD CLAIM FOR RELIEF

Unfair Competition Under California Bus. & Prof. Code §§ 17200 et seq.

13 45. Kestros repeats and realleges each allegation set forth in paragraphs 1 through 44
 14 above as if fully set forth herein.

15 46. Defendants' conduct, described above, constitutes unlawful or fraudulent business
 16 acts or practices and as such constitutes unfair competition under California Business &
 17 Professions Code §§ 17200 *et seq.*

18 47. Defendants' conduct constitutes unlawful business acts or practices in that
 19 Defendants have engaged in trademark infringement under Section 32 of the Lanham Act,
 20 15 U.S.C. § 1114, and unfair competition and false designation of origin under Section 43(a) of
 21 the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

22 48. Defendants' conduct constitutes fraudulent business acts or practices in that
 23 Defendants' trademark infringement, unfair competition, and false designation of origin are likely
 24 to mislead or deceive, and have in fact misled and deceived.

25 49. As a direct and proximate result of Defendants' wrongful conduct, Kestros has
 26 been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts,
 27 and unless Defendants are enjoined by the Court, Kestros will suffer further harm to its name,

reputation, and goodwill. This harm constitutes an injury for which Kestros has no adequate remedy at law.

50. On information and belief, Defendants have acted with full knowledge of Kestros' rights and with the intention to usurp such rights and, therefore, their aforementioned acts are willful and intentional.

51. Defendants should be required to restore to Kestros any and all profits earned as a result of their unlawful or fraudulent business acts or practices, or provide Kestros with any other restitutionary relief as the Court deems appropriate.

FOURTH CLAIM FOR RELIEF

Refusal of Defendants' Federal Trademark Applications Pursuant to 15 U.S.C. § 1119

52. Kestros repeats and realleges each allegation set forth in paragraphs 1 through 51 above as if fully set forth herein.

53. Kestros has valid and protectable rights in the KESTROS® mark since substantially prior to Defendants Kestra Financial, Inc.’s priority date for U.S. Application Serial Nos. 86/983,057, 86/913,195, 86/913,184, and 86/983,033 for the KESTRA Infringing Marks for use in connection with various financial and investment advice and services.

54. Kestros has not authorized Defendants to use, apply to register, or register any mark substantially the same as or nearly identical to KESTROS® for financial and investment advice and services.

55. Defendants' unauthorized use, application, and registration of the KESTRA Infringing Marks for financial and investment advice and services is likely to cause consumers to believe that there is a relationship between Defendants and Kestros and/or that Defendants' KESTRA financial and investment advice and services are associated with or come from Kestros.

56. As a direct and proximate result of Defendants' unauthorized applications for the KESTRA Infringing Marks, Kestros is now, and will be, irreparably injured and damaged by Defendants' aforementioned applications, and unless the applications are refused registration by order of the Court, Kestros will suffer further harm to its name, reputation, and goodwill. This harm constitutes an injury for which Kestros has no adequate remedy at law.

PRAAYER FOR RELIEF

WHEREFORE, Kestros prays for the following relief:

1. That judgment be entered in favor of Kestros and against Defendants on each and every Count of this Complaint;

2. For entry of an order and judgment requiring that Defendants and their officers, agents, servants, employees, owners, and representatives, and all other persons, firms, or corporations in active concert or participation with them, be enjoined during the pendency of this action and permanently thereafter from (a) using in any manner the KESTRA Infringing Marks or any other KESTR-formative trademarks, or any mark or name that is confusingly similar to or a colorable imitation of the KESTROS® mark owned by Kestros; (b) doing any act or thing calculated or likely to cause confusion or mistake in the minds of the members of the public or prospective customers as to the source of the products offered or distributed by Defendants, or likely to confuse members of the public or prospective customers into believing that there is some connection between Kestros and Defendants or any other entity owned by or associated with Defendants; (c) otherwise competing unfairly with Kestros in any manner; or (d) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in parts (a) through (c) of this paragraph 2;

3. For entry of an order and judgment directing Defendants, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon Kestros within thirty (30) days after entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction and ceased all offering of services under the KESTRA Infringing Marks, as set forth above;

4. For entry of an order and judgment directing Defendants, pursuant to 15 U.S.C. § 1118, to deliver up for destruction, or to show proof of said destruction or sufficient modification to eliminate the infringing matter, all catalogs, articles, products, displays, labels, circulars, letterhead, business cards, promotional items, clothing, literature, or other matter in the possession, custody, or under the control of Defendants or their agents bearing any of the KESTRA Infringing Marks, or any mark that is confusingly similar to the KESTROS® mark;

5. For entry of an order directing the USPTO not to register the KESTRA Infringing Marks in Trademark Application Serial Nos. 86/983,057, 86/913,195, 86/913,184, and 86/983,033 pursuant to 15 U.S.C. § 1119;

6. For a judgment in the aggregate amount of (a) Defendants' profits, (b) Kestros' actual damages, (c) the costs of this action pursuant to 15 U.S.C. § 1117, and (d) restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of their unlawful and/or fraudulent business acts or practices;

7. That the Court award enhanced damages under 15 U.S.C. § 1117;

8. That the Court award Kestros reasonable attorneys' fees; and

9. That the Court grant such other and further relief as it deems just and proper.

Dated: February 21, 2018

JENNIFER LEE TAYLOR
AMANDA D. PHILLIPS
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MORRISON & FOERSTER LLP

By: /s/Jennifer Lee Taylor
JENNIFER LEE TAYLOR

Attorneys for Plaintiff
**KESTROS CAPITAL
MANAGEMENT, LLC**

JURY DEMAND

Kestros demands a jury trial in this matter as to all matters triable by a jury.

Dated: February 21, 2018

JENNIFER LEE TAYLOR
AMANDA D. PHILLIPS
RYAN ROMAIN
MORRISON & FOERSTER LLP

By: /s/Jennifer Lee Taylor
JENNIFER LEE TAYLOR

Attorneys for Plaintiff
**KESTROS CAPITAL
MANAGEMENT, LLC**